THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.9638 of 1998

Dated : 17.04.2007

Between:

Rachapudi Pullaiah S/o Venkata Narasaiah

... **PETITIONER**

And:

The District Collector, Prakasam District, and others.

....**RESPONDENTS**

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.9638 of 1998

ORDER:

This writ petition is filed questioning the impugned auction notice dated 17.03.1998 issued by the first respondent proposing to auction the land in Sy.No.338/1AB1 situated at Markapur village of Prakasam District.

It is the case of the petitioner that on 12.01.1962, the then Gram Panchayat Markapur passed a resolution for alienation of an extent of Ac.0.04 cents of land in Sy.No.338/1A-1B in favour of the petitioner, in which cattle pound was constructed, for construction of choultry for providing shelter to pilgrims and travelers who visit Srisailam. Pursuant to that resolution, the District Collector and District Magistrate, Kurnool, by his proceedings dated 25.09.1964 accorded permission for transfer of the said land to the petitioner on a condition that the petitioner should provide a land, equal to the extent of the land alienated to him, by constructing a cattle pound in it at his own cost

and shall handover to the Gram panchayat. Accordingly, an agreement dated 28.09.1964 was executed between the petitioner and the Special Officer representing Markapur Gram Panchayat, and the petitioner agreed to deliver possession of his land admeasuring 243 square yards in Sy.No.342 A/2-A, in exchange to the land given to him. The Special Officer also issued proceedings dated 28.09.1964 transferring the land in Sy.No.338/1A-1B to the petitioner. Subsequently, the petitioner alleged to have constructed cattle pound and addressed a letter dated 05.11.1964 to the Commissioner, Markapur Municipality requesting to take possession of the cattle pound. As there was no response, the petitioner also addressed a letter dated 10.11.1964 to the Revenue Divisional Officer, Markapur, stating that he completed the construction of the cattle pound and also intimated to the Commissioner of Markapur Municpality to take possession of the cattle pound, but he has not taken possession of the same, and therefore, requested him to take possession of the cattle pound. Again on 16.11.1964, the petitioner addressed a letter to the Director of Municipal Administration, Hyderabad, requesting him to direct the Commissioner of Markapur Municipality to take possession of the newly constructed cattle pound.

Be that as it may, one Chimakurthy Brahmaiah of Markapur gave a representation to the District Collector, Kurnool, to cancel the permission given to the petitioner for construction of choultry in the land in question. The District Collector, without conducting any enquiry, cancelled the said permission. Aggrieved thereby, the petitioner filed W.P.No.456 of 1965 and this Court allowed the said writ petition on 22.02.1968 holding that the Collector has no power to review his earlier order. Against the same, the said Brahmaiah filed W.A.No.173 of 1968 and the same was also dismissed confirming the order in the writ petition. Subsequently, at the instance of the said Brahmaiah, one Shaik Madar Saheb trespassed into the land in

question. Therefore, the petitioner filed O.S.No.112 of 1970 before the Court of District Munsif, Markapur, for recovery of possession of the same, and the suit was decreed in favour of the petitioner and possession was also delivered to the petitioner. Again in the year 1982, the said Brahmaiah and others tried to interfere with the possession of the petitioner in the land in question, and the petitioner and his family members filed O.S.No.3 of 1982 on the file of Sub Court, Markapur for permanent injunction, but the same was dismissed on 25.02.1985. Questioning the same, the petitioner and others filed A.S.No.38 of 1985 on the file of the Additional District Judge, Ongole, and the said appeal was allowed on 09.12.1985 setting aside the judgment and decree passed by the trial Court.

Subsequently, on 28.06.1984, the petitioner submitted a plan to the Markapur Municipality for approval of construction of chouldry in the land in question, and the Markapur Municipality by its proceedings dated 28.06.1984 accorded permission to the petitioner. However, the petitioner could not proceed with the construction as the said Brahmaiah and others tried to interfere with his possession and enjoyment of the said land, and also due to happening of some unforeseen events in his family. While so, the petitioner statedly came to know that a board singed by the third respondent was erected on the land in question stating that it belongs to the Government and trespassers would be prosecuted. Thereafter, the petitioner got issued a legal notice dated 19.12.1997 to respondents 1 and 3 and also to the Commissioner of Markapur Municipality, stating that he got title and possession over the land in question and requested them to withdraw the said notice, to which the third respondent sent a reply on 26.01.1998 stating that the land in question was not handed over to the petitioner and it belongs to the grandfather of one Bondili Ram Singh.

Further, the respondents have issued auction notice on 17.03.1998, which was also published in Vaartha newspaper on

28.03.1998, proposing to auction the land in question on 13.04.1998. Thereafter, the petitioner issued a contempt notice dated 22.03.1998 to the third respondent marking a copy thereof to the first respondent, but the respondents are proceeding in their attempts. Hence, this writ petition.

The third respondent filed a counter stating that as per the agreement entered into between the petitioner and the Gram panchayat, the petitioner has to construct cattle pound in his own land at his own cost and handover the same to the Gram panchayat within two months, in exchange of the land alienated to him, but he violated the said condition, therefore, it deemed to have been vested with the Gram panchayat. It is further stated that the petitioner has no right over the land, which he offered as exchange, and it is the ancestral property of one Bondili Vasudeva Singh, and he has been in possession and enjoyment of the same. It is also further stated that the petitioner wanted to grab the land in question as it is in the midst of the town and in order to protect the said land from encroachers, the third respondent got erected signboard. It is concluded that as the petitioner has no right, whatsoever, in the land in question, he cannot assail the impugned auction notice and there is no illegality in issuing the impugned auction notice.

Heard the learned counsel for both the parties.

From a perusal of the entire record, it is clear that the petitioner is fighting the litigation right from the year 1965. In fact, the intention of the petitioner is not to own the land in question, but to construct a choultry for the purpose of pilgrims who visit Srisailam and in that context, the then President and members of Markapur Gram panchayat, by a resolution dated 12.01.1962, resolved that the Gram panchayat has no objection for construction of the choultry at the cost of the sponsor i.e., the petitioner herein. Thereafter, the District

Collector, Kurnool, by his proceedings dated 25.09.1964, accorded permission on a condition that the petitioner shall provide land equivalent to the land proposed to be used by him for construction of the choultry, and get the cattle pound constructed at his own cost in the land given by him as exchange. Thereafter, the petitioner constructed a compound wall but because of the litigation by third parties, the petitioner could not construct the choultry, but at every stage the petitioner was successful in the litigation. In fact, in the earlier round of litigation i.e, W.P.No.456 of 1996, this Court had clearly held that the Collector, who accorded permission to the petitioner to construct choultry, has no power to review his own order and that the order has become final. When this is so, it is not known as to why and how the first respondent can issue proceedings dated 17.03.1998 proposing to auction the land in question. Apart from that as observed above the petitioner is litigating this matter right from 1965 and the purpose for which the land is given to the petitioner is only for construction of a choultry for the benefit of pilgrims who visit Srisailam. In these circumstances, this Court is of the view that the public auction notice dated 17.03.1998 issued by the first respondent proposing to conduct auction on 31.03.1998 is illegal.

Accordingly, the writ petition is allowed setting aside the impugned auction notice dated 17.03.1998. However, it is made clear that the petitioner shall not deviate from the original agreement dated 28.09.1964 and he shall construct only choultry in the land admeasuring Ac.0.42 cents equivalent to 192 square yards in Sy.No.338/1A-1B, situated at Nehru Bazaar, Markapur. However, if the said choultry is not constructed, it is open for the respondent-authorities to proceed in accordance with law. It is further made clear that as the land in question was given to the petitioner 35 years back and the choultry could not be constructed on account of various hurdles, the petitioner is hereby directed to construct the choultry at the

earliest. There shall be no order as to costs.

17.04.2007

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